

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2016 JUL 12 PM 2:17

CLERK

BSA ARCHITECTS d/b/a BULL
STOCKWELL ALLEN

Plaintiff,

v.

HERMITAGE INN REAL ESTATE
HOLDING CO., LLC,

Defendant.

BY Law
DEPUTY CLERK

Case No. CaseNumber

2:16-cv-198

PLAINTIFF BULL STOCKWELL ALLEN'S COMPLAINT

Plaintiff BSA Architects d/b/a Bull Stockwell Allen ("BSA"), by and through its attorneys, Downs Rachlin Martin PLLC, hereby complain against Defendant Hermitage Inn Real Estate Holding Co., LLC ("Hermitage" or "Defendant") and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff BSA is an architecture, planning, and interior design company incorporated in California with its principal place of business in San Francisco, California.
2. Defendant Hermitage is a foreign limited liability company with its designated office located at 29 South Main Street, Suite 327, West Hartford, CT 06107 and its designated mailing address located at P.O. Box 2210, West Dover, VT 15356.
3. Upon information and belief, Defendant Hermitage's members are residents of Connecticut and Vermont.
4. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a), as this action is between a corporation (which takes the citizenship of its principal place of business and its state of incorporations) and a limited liability corporation (which takes the

citizenship of each of its members) which are citizens of different states, and the amount in controversy exceeds \$75,000.00.

5. Upon information and belief, Defendant is a real estate holding company which owns the Hermitage Club and Inn located at Haystack Mountain in Wilmington, Vermont. Defendant's principal shareholder, James Barnes acquired the ski mountain and surrounding property on or about 2011 with the purpose of improving it and constructing a 90,000 square foot clubhouse, and several luxury residences.

6. Personal Jurisdiction exists in this matter over Defendant Hermitage because Defendant has continuous and systematic general business contacts with the State of Vermont at the time of this filing and has purposefully directed its activities at residents of the State of Vermont, and this litigation results from injuries that arise out those activities.

7. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), as a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred within the District of Vermont.

FACTUAL ALLEGATIONS

8. Plaintiff hereby reasserts and re-alleges paragraphs 1 through 7 above, as if set forth fully herein.

9. On March 18, 2015, Plaintiff BSA entered into a contract with Defendant Hermitage, incorporated by reference herein as **Exhibit A** "Letter Agreement with incorporated Proposal," to provide the architectural services for The Hotel Hermitage located at 10 Gatehouse Trail, West Dover, Vermont 05356 (the "Hotel").

10. Defendant Hermitage owns the Hotel property, land, and premises.

11. On March 10, 2016, BSA sent its final bill for services under the contract and became due and payable on April 10, 2016.

12. The debt in the amount of \$338,717.81 plus 1.5% contractual interest totalling \$23,960.05 is currently unpaid.

13. Plaintiff BSA filed a Notice of Mechanics Lien with the Town Clerk for the Town of West Dover, Windham County, Vermont on the 24th day of June, 2016, incorporated by reference herein as **Exhibit B** "Notice of Mechanics Lien."

**COUNT I: BREACH OF CONTRACT AND
VIOLATION OF THE VERMONT PROMPT PAYMENT ACT**

14. Plaintiff hereby reasserts and re-alleges paragraphs 1 through 13 above, as if set forth fully herein.

15. Defendant Hermitage agreed to pay all invoices for architectural service within 30 days. Following receipt of BSA's invoices, Defendant did not object, question, or reject any portion of the invoices, or ask for additional documentation to substantiate the invoices.

16. Defendant Hermitage breached the Letter Agreement by failing to timely pay BSA and thereby caused damages.

17. Defendant Hermitage violated the Vermont Prompt Payment Act, 9 V.S.A. § 4002, but failing to pay BSA in accordance with the terms of the contract.

18. Plaintiff is entitled to full payment of all remaining unpaid invoices, and reasonable attorneys' fees, together with expenses, 9 V.S.A. § 4007.

COUNT II: QUANTUM MERUIT/UNJUST ENRICHMENT

19. Plaintiff hereby reasserts and re-alleges paragraphs 1 through 18 above, as if set forth fully herein.

20. Defendant has received all the benefits of BSA's services without payment, and retention of that benefit without compensation would be unfair, unjust, and would enrich Defendant at BSA's expense.

COUNT III: MECHANICS LIEN

21. Plaintiff hereby reasserts and re-alleges paragraphs 1 through 20 above, as if set forth fully herein.

22. On June 24, 2016, BSA recorded a notice of Mechanic's Lien with the Town Clerk for the Town of West Dover, Windham County.

23. The lien is for monies that last became due on April 10, 2016, within 180 days prior to the filing of the notice of lien.

24. Plaintiff BSA gave notice in writing to Defendant of its lien. See Exhibit B.

25. Plaintiff BSA is entitled to perfect and enforce its lien under the Mechanic's Lien Statute, 9 V.S.A. §§ 1921-1928.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff BSA Architects d/b/a Bull Stockwell Allen respectfully requests that this Court:

- A. Enter judgment in favor of Plaintiff and against Defendant on all Counts contained in Plaintiff's Complaint;
- B. Award Plaintiff compensatory damages of \$338,717.81, plus \$23,960.05 (1.5% contractual interest), plus prejudgment interest from the date of suit;
- C. Award pecuniary losses, reliance, and consequential damages;
- D. Award attorneys' fees and costs; and
- E. Grant such other relief as this Court deems just and equitable.

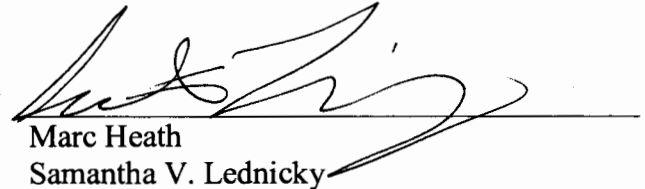
DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all issues so triable.

Dated at Burlington, Vermont this 8th day of July, 2016.

DOWNS RACHLIN MARTIN PLLC

By

A handwritten signature in black ink, appearing to read 'S. Lednický', is written over a horizontal line.

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